

Claimant has filed two Applications for Hearing. The first Application alleges low back injury while lifting a roll of carpet on January 27, 1993. The first claim was assigned Docket No. 179,760. On November 15, 1993, claimant filed a second Application for Hearing alleging a bilateral carpal tunnel syndrome resulting from a series of injuries occurring through and including August 31, 1993. The second claim was assigned Docket No. 184,063.

Claimant filed his first Application for Preliminary Hearing under Docket No. 179,760, the docket number assigned to the back injury of January 27, 1993. The Application was, however, intended to request medical treatment for what was then alleged to be bilateral carpal tunnel syndrome, later diagnosed as cubital tunnel syndrome. At the Preliminary Hearing, the Administrative Law Judge expressly treated the Hearing as a hearing on both docket numbers.

At the first Hearing, held March 3, 1994, the claimant testified that he first recalled having the bilateral upper extremity complaints at the time of the January 27, 1993 injury. The injury occurred when another employee dropped his end of a heavy roll of carpet and it jerked claimant down. Claimant also testified at that March 3, 1994 Hearing that his bilateral extremity complaints thereafter continued to become worse through the last day of his employment, August 31, 1993.

From this March 3, 1994 Hearing, the Administrative Law Judge ordered medical treatment for claimant's upper extremity complaints at the direction of Dr. Moore. Dr. Moore examined claimant, diagnosed bilateral cubital tunnel syndrome and recommended surgery. Claimant was at that time working and asked that the surgery be delayed until August of 1994. The date for surgery was, however, changed to July 1994 and claimant did not appear for the surgery. When Dr. Moore then wrote a second letter expressing some doubt about whether the condition was work related, the respondent and its insurance carrier declined to provide further medical treatment.

When respondent refused to authorize further treatment, claimant filed his second Application for Preliminary Hearing, the one at issue here. At the second Preliminary Hearing, held September 26, 1994, claimant gave testimony explaining why he did not attend the scheduled surgery and respondent offered the correspondence of Dr. Moore. The Administrative Law Judge then entered the Order which is the subject of this appeal, granting additional medical treatment, but changing the authorized treating physician to Dr. Michael T. McCoy. Neither the first Order for Medical Treatment with Dr. Moore nor the second Order for Medical Treatment with Dr. McCoy includes a finding that attributes the injury to either the accident of January 27 or to the alleged series of accidents through August 31, 1993. The absence of such a finding might not, in some circumstances, be material. However, in this case there is no evidence that claimant gave notice of a repetitive trauma injury continuing through August 31, 1993 within ten (10) days of August 31, 1993. This second claim arises under amendments to the Kansas Workers Compensation Act, effective July 1, 1993, which require that notice be given within ten (10) days unless just cause is shown for failure to do so. See K.S.A. 44-520. Claimant has not shown in the present record either notice within ten (10) days or just cause for failure to give such notice. Although there is some evidence of notice given for the accident on January 27, 1993, we are unwilling, in the present state of the record, to assume the Administrative Law Judge was finding either that notice was adequate or the current need for medical treatment related to that January 27, 1993 injury. The Order lists only Docket No. 184,063.

Accordingly, the Appeals Board therefore finds that claimant has failed to establish timely notice pursuant to K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the decision of Administrative Law Judge James R. Ward, dated September 30, 1994, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Judy A. Pope, Topeka, KS
 Michael W. Downing, Kansas City, MO
 James R. Ward, Administrative Law Judge
 George Gomez, Director